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**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Application Number: 10/820,338
Filing Date: April 07, 2004
Appellant(s): ENDLER ET AL.

For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed 9/2/2010 appealing from the Office action mailed 4/29/2010.

(1) Real Party in Interest

The examiner has no comment on the statement, or lack of statement, identifying by name the real party in interest in the brief.

(2) Related Appeal and Interferences

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

The following is a list of claims that are rejected and pending in the application:

Claims 1-28

(4) Status of Amendments After Final

The examiner has no comment on the appellant's statement of the status of amendments after final rejection contained in the brief.

(5) Summary of Claimed Subject Matter

The examiner has no comment on the summary of claimed subject matter contained in the brief.

(6) Grounds of Rejection to be Reviewed on Appeal

The examiner has no comment on the appellant's statement of the grounds of rejection to be reviewed on appeal. Every ground of rejection set forth in the Office action from which the

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appeal is taken (as modified by any advisory actions) is being maintained by the examiner except for the grounds of rejection (if any) listed under the subheading "WITHDRAWN REJECTIONS." New grounds of rejection (if any) are provided under the subheading "NEW GROUNDS OF REJECTION."

(7) Claims Appendix

The examiner has no comment on the copy of the appealed claims contained in the Appendix to the appellant's brief.

(8) Evidence Relied Upon

7028323	Franken et al.	10-2001
2004/0005900	Zilliacus	7-2002
2003/0093810	Taniguchi	10-2002
2002/0065678	Peliotis et al.	5-2002
7054827	Lautzenheiser et al.	9-1997
20030058866*	Kitayama	3-2003

* cited in this Action

(9) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

Claim Rejections - 35 USC § 103

This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

1. Claims 1-6 and 8-15 are rejected under 35 U.S.C. 103(a) as being unpatentable over Franken et al. (US # 7,028,323) in view of Zilliacus (US 2004/0005900) and further in view of Taniguchi (US 2003/0093810).

As to claim 1, Franken et al. teaches a method of displaying (Figure 1, TV “102”) and rating content (Col. 3, Lines 47-50, “...these programs are ranked...”) comprising: receiving at least one string of content having a plurality of segments (Col. 2, Lines 43-46), the content receiving step comprising streaming the content in real-time for viewing while being captured (Col. 2, Lines 43-46, “...provides live digital television service...”); creating profile information, in a record, associated with each segment of the content (Col. 3, Lines 5-7); showing the at least

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one string of content on a display device (Col. 3, Lines 39-42); and updating the profile information associated with each segment of the content to reflect viewer information (Col. 3, Lines 44-47; *{The ranking is part of the profile information.}*). The claim differs from Franken et al. in that it further requires separating each at least one string of content into a plurality of in-and-out points corresponding to each segment, wherein each segment has a plurality of original in-and-out points and wherein the record identifies a plurality of new in-and-out points within the plurality of original in-and-out points, thereby providing a plurality of in-and-out points within each segment. The claim also differs from Franken et al. in that it further requires that a vote, reflecting the quality of each segment of the content, is received on the content, thereby providing a rating value having a quantifiable significance to the in-and-out points and that the profile information is updated according to the vote.

In the same field of endeavor, Zilliacus teaches a video system wherein a plurality of users watching a television program can vote as to the quality of the programs. Voting results are then tabulated by the system (Figure 2; [0033] – [0036]). In light of the teaching of Zilliacus, it would have been obvious to one of ordinary skill in the art to employ the voting system in the system of Franken et al., because an artisan of ordinary skill in the art would recognize that this would provide a higher quality assessment of viewership. More specifically, the system would be able to avoid false positive, instances where a viewer falls asleep or leaves the television on while away when a program that does not represent their interest is airing.

Further in the same field of endeavor, Taniguchi teaches a video data transmitting method of sending in real-time video data being externally inputted, when encoding video data being inputted as stream data, start and stop of an encoding process is repeated at a predetermined time

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interval to carry out a data dividing process whereby a plurality of time-continuous video data are generated as partial video data. Also, metadata of partial video data (*equivalent to vote or rating value*) is generated, which is sent, together with the partial video data, in real-time as partial video metadata (see Abstract, Figure 2, leading end and terminal end as in-and-out points). The partial video data includes a leading end and terminal end and within the leading end and terminal, there exists a plurality of leading and terminal ends corresponding to the metadata for that particular segment of video data (Figure 2). In light of the teaching of Taniguchi, it would have been obvious to one of ordinary skill in the art to separate the content of Franken et al. into partial video data as described in Taniguchi, because an artisan of ordinary skill in the art would recognize that this would facilitate a long-time storage of the video data and a search process through large-capacity video data (see Taniguchi, [0008]).

As to claim **2**, Franken et al., as modified by Zilliacus and Taniguchi, teaches the method according to claim 1 further comprising storing the profile information associated with the at least one string of content within a storage device (see Franken et al., Col. 3, Lines 51-55; *{It is inherent that the personal computer or other processor stores the program names and the ranking.}*).

As to claim **3**, Franken et al., as modified by Zilliacus and Taniguchi, teaches the method according to claim 1 further comprising capturing the at least one string of content with a content capturing device (*The television shows are captured by a video camera or the like.*).

As to claims **4-6**, Although Franken et al. does not state it explicitly, **Official Notice** is taken that capturing content, particularly television programs, using a digital video camera that also records the audio associated with the video is a well known concept in the art. One of

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ordinary skill in the art would recognize the numerous advantages of capturing content with digital video cameras.

As to claim **8**, Franken et al., as modified by Zilliacus and Taniguchi, teaches the method according to claim 1 wherein receiving the at least one string of content occurs in real time relative to capturing the content (see Franken et al., Col. 2, Lines 42-48, "...**live** video programming...").

As to claim **9**, Franken et al., as modified by Zilliacus and Taniguchi, teaches the method according to claim 1 wherein the at least one string of content is video footage (see Franken et al., Col. 2, Lines 42-48, "...**live** video programming...").

As to claim **10**, Franken, as modified by Zilliacus and Taniguchi, teaches the method according to claim 1 wherein the at least one string of content is a digital image (*See Official Notice statement for claims 4-6*).

As to claim **11**, Franken et al., as modified by Zilliacus and Taniguchi, teaches the method according to claim 1 wherein the at least one string of content is audio data (*See Official Notice statement for claims 4-6*).

As to claim **12**, Franken et al., as modified by Zilliacus and Taniguchi, teaches the method according to claim 1 wherein a rating value is determined for each segment of the plurality of segments of the least one string of content based on the vote (see Franken et al., Col. 3, Lines 47-50).

As to claim **13**, Franken et al., as modified by Zilliacus and Taniguchi, teaches the method according to claim 12 further comprising comparing the rating value with a predetermined value rating threshold (see Franken et al., Col. 4, Lines 21-30).

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As to claim **14**, Franken et al., as modified by Zilliacus and Taniguchi, teaches the method according to claim 13 further comprising selectively displaying a segment of the plurality of segments of the at least one string of content based on comparing the rating value (see Franken et al., Col. 4, Lines 21-30).

As to claim **15**, Franken et al. teaches a system for displaying (Figure 1, TV “102”) and rating content (Col. 3, Lines 47-50, “...these programs are ranked...”) comprising: means for receiving at least one string of content having a plurality of segments (Col. 2, Lines 43-46), the at least one string of content streaming in real-time for viewing while being captured (Col. 2, Lines 43-46, “...provides live digital television service...”); means for creating profile information, in a record, associated with each segment of the content (Col. 3, Lines 5-7); means for showing the at least one string of content on a display device (Col. 3, Lines 39-42); and means for updating the profile information associated with each segment of the content to reflect the viewer information (Col. 3, Lines 44-47). The claim differs from Franken et al. in that it further requires a separating means for separating the at least one string of content into a plurality of segments corresponding the in-and-out points, wherein each segment has a plurality of original in-and-out points and wherein the record identifies a plurality of new in-and-out points within the plurality of original in-and-out points, thereby providing a plurality of in-and-out points within each segment. The claim also differs from Franken et al. in that it further requires means for receiving a vote that reflects the quality of the content, thereby providing a rating value having a quantifiable significance to the in-and-out points and that the profile information is updated according to the vote.

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In the same field of endeavor, Zilliacus teaches a video system wherein a plurality of users watching a television program can vote as to the quality of the programs. Voting results are then tabulated by the system (Figure 2; [0033] – [0036]). In light of the teaching of Zilliacus, it would have been obvious to one of ordinary skill in the art to employ the voting system in the system of Franken et al., because an artisan of ordinary skill in the art would recognize that this would provide a higher quality assessment of viewership. More specifically, the system would be able to avoid false positive, instances where a viewer falls asleep or leaves the television on while away when a program that does not represent their interest is airing.

Further in the same field of endeavor, Taniguchi teaches a video data transmitting method of sending in real-time video data being externally inputted, when encoding video data being inputted as stream data, start and stop of an encoding process is repeated at a predetermined time interval to carry out a data dividing process whereby a plurality of time-continuous video data are generated as partial video data. Also, metadata of partial video data (*equivalent to vote or rating value*) is generated, which is sent, together with the partial video data, in real-time as partial video metadata (see Abstract, Figure 2, leading end and terminal end as in-and-out points). The partial video data includes a leading end and terminal end and within the leading end and terminal, there exists a plurality of leading and terminal ends corresponding to the metadata for that particular segment of video data (Figure 2). In light of the teaching of Taniguchi, it would have been obvious to one of ordinary skill in the art to separate the content of Franken et al. into partial video data as described in Taniguchi, because an artisan of ordinary skill in the art would recognize that this would facilitate a long-time storage of the video data and a search process through large-capacity video data (see Taniguchi, [0008]).

2. Claims 7,16,17 and 20-26 and 28 are rejected under 35 U.S.C. 103(a) as being unpatentable over Franken et al. (US # 7,028,323) in view of Zilliacus (US 2004/0005900) in view of Taniguchi (US 2003/0093810) and further in view of Peliotis et al. (US 2002/0065678).

As to claim 7, Franken et al., as modified by Zilliacus and Taniguchi, teaches the method according to claim 1. The claim differs from Franken et al., as modified by Zilliacus and Taniguchi, in that it further requires the step of identifying the content from multiple pieces of content.

In the same field of endeavor, Peliotis teaches method of selecting and excluding video segments in a video stream to be viewed by a viewer comprising: placing markers in the video stream that indicate the position of a division between the video segments of the video stream; placing tags in the video stream that indicate content of each video stream; using video preference information of the viewer to select and exclude video segments by comparing the tags with the video preference information of the viewer; inserting alternate video segments that replace video segments that have been excluded by the viewer ([0008]). The markers are therefore used to identify a separate piece of video segment or content within the video stream or multiple pieces of content, and the tags are used to describe the individual contents.

In light of the teaching of Peliotis et al., it would have been obvious to one of ordinary skill in the art to include the content identification step in the system of Franken et al., as modified by Zilliacus and Taniguchi, because an artisan of ordinary skill in the art would recognize that this would allow the viewer the ability to select video segments based on content ([0006]) so that

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they would not have to view content that is not desired to be viewed, but rather focus on content that the viewer desires ([0005]).

As to claim **16**, Franken et al. teaches a method of displaying (Figure 1, TV “102”) and rating at least one string of content (Col. 3, Lines 47-50, “...these programs are ranked...”), comprising the steps of: receiving the at least one string of content (Col. 2, Lines 43-46), the at least one stream of content streaming in real-time for viewing while being captured (Col. 2, Lines 43-46, “...provides live digital television service...”); creating profile information associated with each segment of the at least one string of content (Col. 3, Lines 5-7); showing the at least one string of content to a plurality of viewers (Col. 3, Lines 42-44); receiving viewer information on each segment of the at least one string of content from each of the plurality of viewers (Col. 3, Lines 43-47, “...viewership information...”); determining a rating value for the content based on viewer information (Col. 3, Lines 47-50, “...ranking...”); and displaying the content to the plurality of viewers based on the rating value of the content (Col. 4, Lines 21-26; *{See arguments above.}*). The claim differs from Franken et al. in that it further requires the steps of identifying the at least one string of content (1), receiving a vote reflecting the quality of the content from a plurality of viewers, thereby providing a rating value having a quantifiable significance to the in-and-out points (2), and separating each at least one string of content into a plurality of in-and-out points corresponding to each segment (3), wherein each segment has a plurality of original in-and-out points (4) and wherein the record identifies a plurality of new in-and-out points within the plurality of original in-and-out points, thereby providing a plurality of in-and-out points within each segment (5).

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(1) In the same field of endeavor, Peliotis teaches method of selecting and excluding video segments in a video stream to be viewed by a viewer comprising: placing markers in the video stream that indicate the position of a division between the video segments of the video stream; placing tags in the video stream that indicate content of each video stream; using video preference information of the viewer to select and exclude video segments by comparing the tags with the video preference information of the viewer; inserting alternate video segments that replace video segments that have been excluded by the viewer ([0008]). The markers are therefore used to identify a separate piece of video segment or content within the video stream or multiple pieces of content, and the tags are used to describe the individual contents.

In light of the teaching of Peliotis et al., it would have been obvious to one of ordinary skill in the art to include the content identification step in the system of Franken et al., as modified by Zilliacus, because an artisan of ordinary skill in the art would recognize that this would allow the viewer the ability to select video segments based on content ([0006]) so that they would not have to view content that is not desired to be viewed, but rather focus on content that the viewer desires ([0005]).

(2) In the same field of endeavor, Zilliacus teaches a video system wherein a plurality of users watching a television program can vote as to the quality of the programs. Voting results are then tabulated by the system (Figure 2; [0033] – [0036]). In light of the teaching of Zilliacus, it would have been obvious to one of ordinary skill in the art to employ the voting system in the system of Franken et al., because an artisan of ordinary skill in the art would recognize that this would provide a higher quality assessment of viewership. More specifically, the system would be

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able to avoid false positive, instances where a viewer falls asleep or leaves the television on while away when a program that does not represent their interest is airing.

(3) Further in the same field of endeavor, Taniguchi teaches a video data transmitting method of sending in real-time video data being externally inputted, when encoding video data being inputted as stream data, start and stop of an encoding process is repeated at a predetermined time interval to carry out a data dividing process whereby a plurality of time-continuous video data are generated as partial video data. Also, metadata of partial video data (*equivalent to vote or rating value*) is generated, which is sent, together with the partial video data, in real-time as partial video metadata (see Abstract, Figure 2, leading end and terminal end as in-and-out points). The partial video data includes a leading end and terminal end (4) and within the leading end and terminal, there exists a plurality of leading and terminal ends corresponding to the metadata for that particular segment of video data (5) (Figure 2). In light of the teaching of Taniguchi, it would have been obvious to one of ordinary skill in the art to separate the content of Franken et al. into partial video data as described in Taniguchi, because an artisan of ordinary skill in the art would recognize that this would facilitate a long-time storage of the video data and a search process through large-capacity video data (see Taniguchi, [0008]).

As to claim 17, Franken et al., as modified by Zilliacus, Taniguchi and Peliotis et al., teaches the method according to claim 16 further comprising updating the profile information associated with each segment of the at least one string of content to reflect the rating value (see Franken et al., Col. 3, Lines 44-47; *{The ranking is part of the profile information.}*).

As to claim **20**, Franken et al., as modified by Zilliacus and Peliotis et al., teaches the method according to claim 16 further comprising storing the profile information (see Franken et al., Col. 3, Lines 51-55; *{It is inherent that the personal computer or other processor stores the program names and the ranking.}*).

As to claim **21**, the limitations of claim 21 can be found in claim 16 in method form. Therefore, the cited passages and analysis of Franken et al., Zilliacus, Taniguchi and Peliotis et al. are applicable to rejection of claim 21.

As to claim **22**, Franken et al., as modified by Zilliacus and Peliotis et al., teaches the system according to claim 21 wherein the at least one string of content includes one of a video footage (see Franken et al., Col. 2, Lines 42-46), digital image, and audio data.

As to claim **23**, Franken et al., as modified by Zilliacus and Peliotis et al., teaches the system according to claim 21 further comprising a rendering module for formatting each segment of the at least one string of content to be displayed to the viewer (see Franken et al., Figure 1, video recorder “116”; Col. 5, Lines 36-40, “...compressed...”).

As to claim **24**, Franken et al., as modified by Zilliacus and Peliotis et al., teaches the system according to claim 21 further comprising a rendering module for selectively formatting each segment of the at least one string of content for display to the viewer based on the rating value associated with each segment of the at least one string of content (see Franken et al., Col. 5, Lines 36-40, “...compressed...”).

As to claim **25**, Franken et al., as modified by Zilliacus, Taniguchi and Peliotis et al., teaches a computer-readable medium having computer executable instructions (see Franken et al., Figure 1) for performing a method comprising: identifying at least one string of content, the

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at least one string of content identifying step comprising streaming the at least one string of content in real-time for viewing while being captured; separating the at least one string of content into a plurality of segments having a corresponding plurality of in-and-out points; creating profile information associated with each segment of the plurality of segments of the at least one string of content; showing the at least one string of content to a plurality of viewers; receiving a vote on each segment of the plurality of segments of the at least one string of content from each of the plurality of viewers, wherein the vote reflects the quality of each segment of the plurality of segments of the at least one string of content, thereby providing a rating value for establishing a quantifiable significance corresponding to the plurality of in-and-out points; determining a rating value for each segment of the plurality of segments of the at least one string of content based on the vote for establishing a plurality of in and out points; and displaying each segment of the plurality of segments of the at least one string of content to the plurality of viewers based on the rating value of each segment of the plurality of segments of the at least one string of content. *See claim 16 above.*

As to claim **26**, Franken et al., as modified by Zilliacus, Taniguchi and Peliotis et al., teaches the method according to Claim 1, further comprising the steps of: storing the profile information associated with the at least one string of content within a storage device(see claim 20 above); capturing the at least one string of content with a content capturing device (see claim 3 above); identifying the at least one string of content from the plurality of segments (see claim 16 above); comparing the rating value with a predetermined value rating threshold (see claims 13 and 14 above); and selectively displaying a segment of the plurality of segments of the at least one string of content based on comparing the rating value (see claim 25 above), wherein the

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content capturing device comprises an element selected from a group consisting of a video camera, a digital camera, and an audio recorder (see claims 4-6 above), wherein receiving the at least one string of content occurs in real time relative to capturing the at least one string of content (see claim 21 above), wherein the at least one string of content comprises an element selected from a group consisting of video footage (see claim 22 above), a digital image, audio data, and wherein a rating value is determined for each segment of the plurality of segments of the at least one string of content based on the vote (see claim 21 above).

As to claim **28**, Franken et al., as modified by Zilliacus, Taniguchi and Peliotis et al., teaches the system according to Claim 21, further comprising: a rendering module for formatting each segment of the plurality of segments of the at least one string of content to be displayed to the viewer; and a rendering module for selectively formatting each segment of the plurality of segments of the at least one string of content for display to the viewer based on the rating value associated with each segment of the plurality of segments of the at least one string of content (see claims 23 and 24 above), wherein the at least one string of content comprises an element selected from a group consisting of a video footage (see claim 22 above), digital image, and audio data.

3. Claim 18 is rejected under 35 U.S.C. 103(a) as being unpatentable over Franken et al. (US # 7,028,323) in view of Zilliacus (US 2004/0005900) in view of Taniguchi (US 2003/0093810) in view of Peliotis et al. (US 2002/0065678) and further in view of Lautzenheiser et al. (US # 7,054,827).

As to claim **18**, Franken et al., as modified by Zilliacus, Taniguchi and Peliotis et al., teaches the method according to claim 16. The claim differs from Franken et al., as modified by Zilliacus, Taniguchi and Peliotis et al., in that it further requires the step of checking for a number of viewers submitting the vote.

In the same field of endeavor, Lautzenheiser teaches a method and apparatus for validating a survey database and identifying portions of the survey database that are potentially problematic with the idea of checking the number of responses for selected answers in the survey database to ensure that corresponding user requests are based on a statistically significant sample size, or the user is notified otherwise (Col. 32, Lines 7-11; *{The number of responses for selected answers is the same as the number of viewers submitting the vote.}*). In light of the teaching of Lautzenheiser, it would have been obvious to one of ordinary skill in the art to include survey database validation scheme in the system of Franken et al., as modified by Zilliacus, Taniguchi and Peliotis et al., because an artisan of ordinary skill in the art would recognize that this would prevent the results from being misleading when results may be based on a statistically insignificant sample size, thereby misleading the user (Col. 2, Lines 17-20).

(10) Response to Argument

- A. Whether Claims 1-6 and 8-15 are unpatentable, under 35 U.S.C. § 103(a), over Franken et al. (US 7028323), in view of Zilliacus (US 2004/0005900), and in further view of Taniguchi (US 2003/0093810)**

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Appellants traverse these grounds of rejection, noting passages in decisions, *KSR vs. Teleflex, Inc. et al.*, *Ex parte Clapp*, *In re Hoch and Graham vs. John Deere*, as the proper bases for rejection. Appellants further note the combination of elements and limitations on pp. 14 and 15 that patentably distinguish independent claim 1 and independent claim 15 from the cited references above. Furthermore, Appellant states claims 2-6 and 8-14 by dependency upon claim 1 are also patentably distinguishable.

On p. 16, Applicant particularly argues with respect to claims 1 and 15, "...Taniguchi does not actually teach, suggest, motivate, or otherwise obviate the following claimed limitation, inter alia: "record identifying a plurality of new in-and-out points within the plurality of original in-and-out points, thereby providing a plurality of in-and-out points within each segment" in light of the meaning in the originally filed specification and that the Examiner has misinterpreted the meaning of "in-and-out points" as described in the Appellants' Specification..." Initially, the examiner would like to note that Appellants have not explicitly traversed the limitations of claims that the examiner has stated Franken and Zilliacus teach. On pp. 16 and 17, Appellants note the teachings of Franken and Zilliacus, but seemingly are only concerned with the limitations regarding the claimed "original in-and-out points" and "new in-and-out points". The examiner has not relied upon these references to teach the limitations regarding the "in-and-out points". Therefore, these arguments are deemed moot. Turning to Taniguchi, Appellants correctly note the teachings of this reference, specifically "...the start and stop of an encoding process is repeated at a predetermined interval to carry out a dividing whereby a plurality of time-continuous video data are generated as partial video data. Also, metadata of partial video data is generated, which is sent, together with the partial video data, in real-time as partial video

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metadata..." (see Abstract; also see ¶ [0047]-[0050] for a more detailed disclosure). In this regard, Appellants argue, "Although Taniguchi may teach a first level of partial video data, having a leading end and a terminal end, as well as a second level of partial video data comprising scene data, such scene data does not have "new in-and-out points" within "original in-and-out points" as described and claimed in the present application...In a closer reading of the present application, with respect to video footage, for example, the "original in-and-out points" correspond to start/stop signals for (initially) separating multiple video segments (Specification, p. 9, 11. 8-14). Nowhere in the present application are the "original in-and-out points" defined as segmentation merely performed by using predetermined time intervals." The examiner respectfully disagrees with Appellants' notion that Taniguchi does not teach the claimed "original in-and-out points" and "new in-and-out points" and respectfully submits that Taniguchi discloses the claimed limitations at issue under the broadest reasonable interpretation doctrine. Appellants note that the specification discloses that the original in-and-out points correspond to start/stop signals for separating multiple video segments. The specification also states that as an example, the start/stop signals correspond to the use of the video camera record button. However, the specification does not explicitly define the in-and-out points as corresponding only to the use of a video camera record button nor does it preclude segmentation using predetermined time intervals from being start/stop signals (i.e. start at the beginning of the time interval and stop at the end).

"Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims." See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993).

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Appellants assert that the rating value establishes in-and-out points and that Taniguchi does not teach such a feature. Taniguchi does teach that metadata is established within partial video data. Since metadata would have to be separated from the partial scene data, such a separation can be reasonably interpreted as in-and-out points within the original in-and-out points of the whole video data. It is true that Taniguchi does not teach a rating value. However, Franken teaches a rank associated with particular content. Such information can be interpreted to be a rating value and metadata comparable to that which establishes new in-and-out points within the original in-and-out points of whole video data in Taniguchi. Appellants further assert, "... the "new in-and-out points" do not necessarily correspond to merely "logical" scene breakdowns. Rather, these "new in-and-out points" correspond to video clips having "quantifiable significance" and are user-driven or audience-driven (Specification, p. 11, 11.2-4)." The examiner submits that according to claims 1 and 15, the rating value, not video clips, have quantifiable significance and it is obvious to see how a rank carries quantifiable significance. Appellants lastly argue with respect to claims 1 and 15, "The April 29, 2010, Final Office Action fails to explain how Franken et al.'s device may be modified to generate a plurality of new in-and-out points within a plurality of original in-and-out-points using a rating value, inter alia, i.e., ascertained the differences between the prior art and the claims at issue." For clarification purposes, the examiner submits that the video programs of Franken are segmented into partial video data by the method of Taniguchi (i.e. creation of original in-and-out points) and once a rank (i.e. rating value) is established, this creates new in-and-out points within the original in-and-out points as metadata.

For the reasons stated above, the examiner submits that Taniguchi discloses the limitations of claims 1 and 15 corresponding to “in-and-out points”, thereby meeting the burden required by 35 U.S.C. 103 and the rejections of which should be affirmed.

With regard to claims 4-6, Appellants assert “...the Examiner has not sustained the rejection of Claims 4-6 on this basis of obviousness in merely taking Official Notice that “capturing content, particularly television programs, using a digital video camera that also records the audio associated with the video” is a well-known concept in the art in a blanket statement without proffering any object evidence to support the assertion or any evidence to support obviousness for the foregoing limitation in combination with all recited elements and limitations of the base claim and any intervening claims. The Appellants hereby respectfully traverse this Official Notice taken by the Examiner and further respectfully submit that the Examiner has conceded that such Official Notice does not constitute admitted prior art for failure to so state in the April 29, 2010, Final Office Action (p. 6, 11. 13-17).” Appellants further cite sections of the MPEP regarding the proper procedure regarding Official Notice. The examiner would like to particularly note MPEP 2144.03, C., where it states, “To adequately traverse such a finding, an applicant must specifically point out the supposed errors in the examiner's action, which would include stating why the noticed fact is not considered to be common knowledge or well-known in the art. See 37 CFR 1.1 ll(b).” Up until this Appeal Brief, the examiner submits that Appellants have not specifically pointed the supposed errors in the examiner's Official Notice. Therefore, the examiner did not provide the required documentary evidence since the taking of Official Notice was not adequately traversed. Without acquiescing as to whether the disputed limitations are admitted prior art, the examiner would like to provide this required

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documentary evidence in the form of the United States Publication to Kitayama (US 2003/0058866). In ¶ [0346], Kitayama discloses a television camera for capturing video and audio content. Kitayama further discloses in ¶ [0125] that the content is delivered in digital form. Accordingly, the examiner submits that all the requirements regarding the taking of proper Official Notice have been taken and the rejection of claims 4-6 should be affirmed.

B. Whether Claims 7, 16, 17, 20-26, and 28 are unpatentable, under 35 U.S.C. § 103(a), over Franken et al. (US 7028323), in view of Zilliacus (US 2004/0005900) and Taniguchi (US 2003/0093810), and in further view of Peliotis (US 2002/0065678)

The examiner submits that the arguments relative to these grounds of rejection have been answered in section A. above except for the assertion that, "...the Examiner may have inadvertently engaged in impermissible hindsight reconstruction, especially in light of the inordinate number of references cited, four references, by using the Applicants' invention as a roadmap in order to arrive at the subject matter of Claims 7, 16, 17, 20-26, and 28." The examiner submits that impermissible hindsight has not been used to reject the aforementioned claims. These claims are directed toward systems and methods for displaying and rating content. Not only that, but the claims also require the specific manner in which this content is recorded along with rating data (i.e. in-and-out points). These two features are markedly different. Thus, a single prior art reference may not disclose both. Multiple references may be required.

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C. Whether Claim 18 is unpatentable, under 35 U.S.C. § 103(a), over Franken et al. (US 7028323), in view of Zilliacus (US 2004/0005900), in view of Taniguchi (US 2003/0093810) and Peliotis (US 2002/0065678), and in further view of Lautzenheiser et al. (US 7054827)

Appellants state that Lautzenheiser et al. does not teach the limitations of the independent claims regarding the in-and-out points. However, the examiner has not relied upon Lautzenheiser et al. to teach these limitations. Thus, it is submitted that those arguments are moot. Appellants reiterate their argument that impermissible hindsight may have been used to reject claim 18. For the reasons set forth in section B., this allegation is refuted.

D. Whether the Examiner has erred, as a matter of law, in failing to consider and treat the present application, having more than three (3) actions and a pendency of more than five (5) years, as "special," under MPEP §§ 707.02 and 708.01

The examiner notes Appellants' arguments regarding the examiner's alleged failure to consider and treat the present application. It should be noted that the examiner engaged in multiple interviews with Appellants' representatives and consulted with other examiners regarding the claimed limitations. It seems due to the apparent rift in interpretation of the in-and-out-points between the examiner and Appellants that advancement to disposal was not achieved.

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(11) Related Proceeding(s) Appendix

- *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993).

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,

/Anthony J. Daniels/

Examiner, Art Unit 2622

11/20/2010

Conferees:

/Sinh Tran/

Supervisory Patent Examiner, Art Unit 2622

/Lin Ye/

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